

(1995) 09 KL CK 0054

High Court Of Kerala

Case No: C.R.P. No. 1910 of 1995

Jacob

APPELLANT

Vs

Jose

RESPONDENT

Date of Decision: Sept. 20, 1995

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 1 Rule 10(2), Order 23 Rule 1

Hon'ble Judges: K. Sreedharan, J

Bench: Single Bench

Advocate: Dinesh Mathew J. Murikan, for the Appellant; K.G. Balasubramanayam, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K. Sreedharan, J.

Defendants in O.S. 771/94 on the file of the Principal Munsiff's Court, Irinjalakuda are the petitioners in this revision petition. They challenge the order passed by the learned Munsiff in I.A. 1589/95 filed in the suit. Petitioners in I.A. 1589/95 filed before the court below who are respondents 1 and 2 in this revision petition filed caveat. When the revision petition came up for admission, I heard counsel appearing on either side in detail. I am disposing of the revision petition. The short facts necessary for the disposal of the revision petition are as follows:- O.S. 771/94 was filed by three plaintiffs. They were Jose, Babu and Narayanan. The suit was one for a decree of permanent prohibitory injunction restraining the defendants from trespassing into any portion of the properties belonging to the plaintiffs from cutting open a pathway or widening the same (sic) a lane. While the suit was being prosecuted by the three plaintiffs, plaintiffs 1 and 2 namely M/s. Jose and Babu filed I.A. 186/95 under Order 23 Rule 1 of the CPC to withdraw the suit with permission to file fresh suit. The court below granted the prayer and allowed plaintiffs 1 and 2 to walk out of the suit reserving their right to file fresh suit if circumstances so

required. They did in fact withdrew from the suit in an attempt to arrive at a compromise with the defendants. Subsequently it is averred that their attempt to compromise the dispute did not fructify and so they wanted to get themselves impleaded as additional plaintiffs in the suit and to prosecute the same. For the said purpose they filed an application under Order 1 Rule 10 of the Code. Court below allowed that application stating that their impleadment will avoid multiplicity of suit. The said order is under challenge.

2. Plaintiffs 1 to 3 are owners of three plots of land through which defendants intend to lay a pathway. It was to prevent the defendants from cutting open a pathway across their property they approached the court the suit. Pending the suit, plaintiffs 1 and 2 withdrew from the suit as per Order in I.A. 186/95 with liberty to file fresh suit, Subsequently they want to get themselves impleaded as additional plaintiffs and to continue the suit in respect of properties owned by them as well.

3. Order 1 Rule 10(2) inter alia states that the court may at any stage of the proceedings join any person whether as plaintiff or defendant. It also provides that any person can be joined in the suit if his presence before the court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. This means that the court can join any person in the suit only if it is found that his presence before the court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions raised in the suit. As stated earlier, in the instant case, three plaintiffs joined together to protect their respective properties from trespass threatened by defendants in the suit. Each one of the plaintiff has got a separate cause of action as against the defendants. It was under such a situation, plaintiffs 1 and 2 wanted to get out of the suit and they did infact got out. This shows that they did not want to have the dispute in relation to their properties adjudicated upon in the suit. After their withdrawal from the suit the suit in relation to the property belonging to the third plaintiff was being proceeded with. In that suit the dispute between the third plaintiff on the one hand and the defendants on the other in relation of the property belonging to the third plaintiff can be effectively and completely adjudicated upon. For such an adjudication, the presence of plaintiffs 1 and 2 who have no manner of right over the property owned by the third plaintiff is not necessary. This being the factual position, the court below was clearly in error in allowing the petitioners in I.A. 1589/95 to get themselves impleaded as additional plaintiffs. These additional plaintiffs have separate causes of action against the defendants in relation to their properties over which the third plaintiff has no manner of right. In *N.T Palaniswamy Chettiar v. Komara Chettiar* AIR 1950 Madras 91, a learned single Judge of the Madras High Court stated:-

In an application under Order 1, Rule 10 C.P.C. the court should consider mainly whether the presence of the proposed parties would be necessary for adjudicating upon the questions that are involved in the suit and an order for addition of parties

should not be made merely with a view to avoid multiplicity of suits if otherwise their presence is not necessary for determining the real question involved in the suit.

This statement of the law has been followed by a learned single Judge of this Court in *Unichirakutty Amma v. Krishnan Nair*, 1964 KLT 484. I am in respectful agreement with the above statement of the law. In the instant case, the learned Munsiff did not advert to the question as to whether the junction of petitioners in I.A. 1589/95 is necessary for adjudicating the real question involved in the suit prosecuted by the third plaintiff. The issue that was to be decided in that suit was in relation to the property belonging to the third plaintiff. Over that property petitioners in I.A. 1589/95 have no manner of right or claim. So for a proper and complete adjudication of the suit between the third plaintiff and the defendants in the suit junction of the petitioners in I.A. 1589/95 was not at all necessary or essential. In this view of the matter, the court below was clearly in error in allowing the petitioners in I.A. 1589/95 to be impleaded as additional plaintiffs. The court below acted without jurisdiction in allowing the said I.A. So I set aside the order dated 31.7.95 passed by the learned Munsiff in I.A. 1589/95 in O.S. 771/94. Pending suit should be disposed of by the Munsiff in accordance with law as expeditiously as possible.

C.R.P. is allowed in the above terms. I make no order as to costs.